

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER CIRELLI,

Plaintiff,

– *against* –

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

19 Civ. 2709 (ER) (SDA)

RAMOS, D.J.:

Christopher Cirelli commenced this action against the Commissioner of Social Security (the “Commissioner”) pursuant to 42 U.S.C. § 405(g), seeking review of the denial of his application for disability benefits. Doc. 2. On March 28, 2019, the Court referred the case to Magistrate Judge Stewart D. Aaron. Doc. 7. On May 7, 2020, Magistrate Judge Aaron issued a report and recommendation, recommending that the Commissioner’s decision be vacated and that the case be remanded for further proceedings, and on June 19, 2020, the Court adopted Judge Aaron’s recommendations in their entirety. *Cirelli v. Comm’r of Soc. Sec.*, No. 19 Civ. 2709 (ER) (SDA), 2020 WL 3402433, at *1 (S.D.N.Y. June 19, 2020). On September 17, 2020, the Court entered the parties’ stipulation that Cirelli be awarded attorney’s fees under the Equal Access to Justice Act in the amount of \$7,500. Doc. 26. However, Cirelli’s counsel received a fee of only \$5,403.38 due to federal debt offset under the U.S. Treasury Offset Program. *See* Doc. 27-1 ¶ 4. Following the remand, the Commissioner issued a decision favorable to Cirelli, awarding him disability benefits and resulting in significant retroactive benefits. *Id.*

On April 30, 2021, Cirelli filed a motion for attorney’s fees pursuant to 42 U.S.C. § 406(b), seeking an award of \$20,000 in fees. Docs. 27 and 27-1 ¶ 7. On May 13, 2021, the Commissioner submitted a letter to the Court, indicating that the Commissioner did

not object to the motion. *See* Doc. 28. On May 19, 2021, Magistrate Judge Aaron issued a Report and Recommendation (“R&R”), recommending that Cirelli’s motion be granted, that Cirelli be awarded \$20,000 in attorney’s fees, and that Cirelli’s counsel be ordered to refund promptly to Cirelli the \$5,403.38 in attorney’s fees previously paid. Doc. 29. Magistrate Judge Aaron also notified the parties that they had fourteen days from service of the R&R to file written objections. *Id.* No objection to the R&R has been filed.

I. STANDARD OF REVIEW

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise “specific,” “written” objections to the report and recommendation “[w]ithin fourteen days after being served with a copy.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party’s objections are “merely perfunctory responses” argued in an attempt to “engage the district court in a rehashing of the same arguments set forth in the original petition.” *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).

II. DISCUSSION

The Commissioner has filed no objection, and the Court has reviewed Magistrate Judge Aaron's thorough and well-reasoned R&R and finds no error, clear or otherwise. The Court therefore adopts Magistrate Judge Aaron's recommendations in their entirety. Accordingly, Cirelli's motion for attorney's fees is GRANTED, Cirelli is awarded \$20,000 in attorney's fees, and Cirelli's counsel is ordered to refund promptly to Cirelli the \$5,403.38 in attorney's fees previously paid pursuant to the Equal Access to Justice Act. The Clerk of Court is respectfully directed to terminate the motion. Doc. 27.

It is SO ORDERED.

Dated: August 5, 2021
New York, New York



EDGARDO RAMOS, U.S.D.J.